IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/06/2003

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE T.V. MASILAMANI

Criminal Appeal No. 836 of 2000

Meiyazhagan ... Appellant.

-Vs-

State rep. by
Inspector of Police,
Kattumannar Koil Police Station,
Kattumannar Koil,
Cuddalore District. ... Respondent

Prayer: Appeal against the judgment passed by the learned Additional District and Sessions Judge -cum- Chief Judicial Magistrate, Cuddalore, in S.C.No. 203 of 1999 dated : 23.6.2000.

!For Appellant : Mr.M.N.Balakrishnan

^For Respondent : Mr.M.K.Subramanian
Govt. Advocate (Crl.side)

:JUDGMENT

(Judgment of the Court was delivered by N. DHINAKAR, J)

The appellant was arrayed as A.1 before the learned Additional District and Sessions Judge -cum- Chief Judicial Magistrate, Cuddalore, in S.C.No. 203 of 1999, along with another, who was arrayed as A.2. In the judgment, the appellant will be referred to as "A.1" and the other accused, who was acquitted by the trial Court, will be referred to as "A.2". A.1 and A.2 were charged under Section 341 IPC. and A.2 was also charged under Section 342 IPC. A.1 was charged under Section 302 IPC., while A.2 was charged under Section 302 read with 34 IPC. The allegation against them is that at about 3.30 a.m. on 20.1.1998, they wrongfully restrained the deceased, Kasinathan and that A.1 cut him with an aruval and caused his death and A.2 shared the common intention of A.1 in causing the death. The learned trial Judge, while acquitting A.2 under Section 341 IPC., convicted only A.1

under the said section and sentenced him to one month rigorous imprisonment. A.2 was acquitted under charge No.2 as well as under charge No.4 framed under Sections 342 and 302 read with 34 IPC.; but A.1 was convicted under Section 302 IPC. and sentenced to imprisonment for life. A.1, aggrieved by the said order of conviction and sentence, has chosen to prefer the above appeal.

2. The facts are as follows:-
P.W.1 is the wife of the deceased and P.W.2 is the mother of the deceased. P.W.5 is the wife of A.2. They were all residing in Reddiar Colony. A day after the Pongal festival in the year 1998 (15.1.1998), the accused went to the house of the deceased and wanted him to accompany him to Coimbatore and thereafter, the accused left the house with the deceased and P.W.1, the wife of the deceased, who was in the house, saw both A.1 and her husband leaving the house. The deceased did not return home. At 4.30 a.m. on 20.1.1998, when P.W.1 was sleeping in her house, the accused went there and woke up P.W.1 by calling her name. P.W.1 came out of the house and A.1 informed her that while she and the deceased returned from Coimbatore in a bus and after alighting from the bus, when they were proceeding towards the village, her husband had become sick and that blood is oozing through his mouth. He requested P.W.1 to go over to the place. P.W.1 accompanied by her mother-in-law went along with A.1 and found her husband in front of a motor pump shed. The deceased was alive; but was not in a position to talk. He took the hands of P.W.1 and placed it on the neck, where she found a cut injury. The deceased, thereafter, breathed his last.

3. In the meantime, at about 6.00 a.m., P.W.4, the Village Administrative Officer, was informed by his menial that Kasinathan is lying dead near a pump shed and P.W.4 went there. He found P.W.1 by the side of the dead body of her husband and she was crying. He questioned her and she gave a statement, which was reduced into writing. The said statement is Ex.P.1. Thereafter, P.W.4 despatched Ex.P.1 to Kattumannar Koil Police Station through his menial and Ex.P.1 was received by P.W.12, the Head Constable of the said police station. P.W.12, on the basis of Ex.P.1, registered a case in Crime No. 34 of 1998 under Section 174 Cr.P.C. and prepared express reports. Ex.P.9 is a copy of the printed first information report and investigation was taken up by Ayyadurai Anthoniar. (Ayyadurai Anthoniar was not examined in Court as he was bedridden and could not attend Court and the investigation conducted by him was spoken to by P.W.12, who assisted him and who knew his handwriting and signature).

4. The Inspector of Police, Ayyadurai Anthoniar, after taking up investigation in the crime, reached the scene of occurrence, where in the presence of the Village Administrative Officer and others prepared an observation mahazar, Ex.P.2 and drew a rough sketch, Ex.P.13. The inquest was conducted between 10.00 a.m. and noon in the presence of Panchayatdars and the inquest report is Ex.P.12. At the time of inquest, P.Ws.1, 2, 3, 6 and others were examined and their statements were recorded. The scene of occurrence and the dead body were caused to be photographed by a photographer. Thereafter, he seized M.Os.1 and 2, blood-stained earth and sample earth r espectively, under a mahazar Ex.P.3. The body was then despatched to the hospital with a requisition to the doctor for conducting autopsy.

5. On receipt of the requisition, P.W.11, Civil Assistant Surgeon attached to Government Hospital, Kattumannarkoil, conducted autopsy on the body of Kasinathan and found the following external injuries:-

1.Incised wound about 3 = cm x < cm x skin depth. Horizontal in front of neck one cm below the thyroid cartilage level. Centre of neck.

2.Incised wound 1 = cm below the first said injury 1 is seen in front of neck measuring about 5 cms x 1 = cm x 1 cm on the left side edge of the injury and 2 = cm on the right end of the injury.

The doctor issued Ex.P.8, post-mortem certificate, reserving his opinion about the cause of death and after the receipt of the chemical analyst's report, gave his final opinion opining that the deceased died on account of haemorrhage and anoxia due to the injury suffered by him about 18 to 22 hours prior to autopsy.

6. The Inspector of Police, continuing with his investigation, questioned P.Ws.7, 8 and others and recorded their statements. He searched for the accused; but they were found absconding. At about 12.30 p.m. on 24.1.1998, on an information received, he proceeded to the house of A.2, where he arrested both A.1 and A.2 in the presence of P.W.10 and another. A.1 was questioned and he gave a statement. In pursuance of the admissible portion, Ex.P.4, given by him, A.1 took the police to a pump shed room and from near a pipe produced M.O.3 and the same was seized under a mahazar Ex.P.5. The crime was altered to one under Section 302 IPC. and the accused were, thereafter, sent to Court for remand. The shirt, pant, underwear as well as the knife were sent to Court with a requisition, Ex.P.15, requesting the Court to forward them for analysis. He questioned the doctor, who conducted autopsy and recorded his statement on 30.3.1998. He also recorded a further statement of the said doctor on 7.7.1998. He obtained the post-mortem certificate on 17.11.1998 and after the receipt of Exs.P.18 and P.19 the reports of the chemical analyst and Exs.P.20 and P.21, the reports of the serologist and after completing the investigation, the final report was filed against the accused on 10.2.1999.

7. The accused were questioned under Section 313 of the Cr.P.C. on the incriminating circumstances appearing against them and they denied all the incriminating circumstances.

8. The prosecution, before the trial Court, examined the doctor, P.W.11, to establish the cause of death and from the evidence of the doctor as well as from the certificate, Ex.P.8, and the final opinion given by him, there can be no doubt in the mind of this Court that Kasinathan died on account of the injuries suffered by him and that the death is due to homicidal violence. The said fact is also not disputed by the defence.

9. Though P.W.9 was examined to establish that the accused inflicted the said injury, he turned hostile and therefore, the prosecution had to rely

only upon the circumstantial evidence. It is the settled principle of law, where there is no eye-witness to the murder and the case against the accused depends entirely on circumstantial evidence, the standard of proof required to convict the accused on such evidence is that the circumstances relied upon must be fully established and the chain of evidence furnished by these circumstances should be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case where the various links have been satisfactorily made out and the circumstances point to the accused as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain vide DEONANDAN MISHRA -vs- STATE OF BIHAR (A.I.R. 1955 S.C. 801). The said view was reiterated by the Supreme Court in STATE OF MAHARASHTRA -vs- SURESH (200 0 S.C.C. (Crl.) 263). Keeping the above principles in mind, we will now analyse the evidence to find out whether the prosecution had succeeded in establishing all the links in the chain of circumstances.

10. The first circumstance is brought out through the evidence of P.W.1, who is the wife of the deceased. According to her, a day after the Pongal festival, which means on 15.1.1998, A.1 came to the house and took her husband after asking him to accompany him to Coimbatore and that her husband left in the company of A.1. She has further deposed that at about 4.30 a.m. on 20.1.1998, A.1 came to her house and woke her up and informed her that he and her husband returned from Coimbatore in a bus and that after alighting from the bus, while they were on their way to the village, her husband had become sick near a pump shed and that blood is oozing through his mouth. On hearing this, P.W.1 and her mother-in-law went to the pump shed room, where she found her husband with bleeding injuries. The deceased, on seeing his wife, P.W.1, though did not utter a word, put her hand over his neck to indicate that he has been cut, since P.W.1 found the cut injury on the neck of the deceased. Thereafter, the complaint was given by her to P.W.4, the Village Administrative Officer, who arrived at the scene on being informed by his menial. In t he said complaint, P.W.1 has mentioned that the deceased was taken by A.1 to Coimbatore a day after Pongal festival. She has further stated in the complaint that while she was in the house, A.1 informed her that her husband has developed sickness while he and her husband were walking towards the village after alighting from the bus. This evidence of P.W.1, therefore, indicate that A.1 and the deceased were together when the deceased suffered injuries and it is for the accused to explain the circumstances under which the deceased came to suffer the injuries. He had no explanation to offer. The absence of an explanation or a false explanation by the accused is an additional link in the chain of circumstances as held by the Supreme Court in DEONANDAN MISHRA -vs- STATE OF BIHAR (A.I.R. 1955 S.C. 801).

11. The second circumstance is the evidence of P.W.6. It is no doubt

true that this witness was treated hostile; but it is settled principle of law that the portion of the evidence of a witness, even if the said witness turned hostile, can be taken into consideration. P.W.6 is treated hostile as he did not say in his evidence that he saw the accused and the deceased following him after alighting from the bus. A perusal of the evidence of P.W.6 shows that at 2.30 a.m., he boarded the bus at Chidambaram for Kattumannarkoil and in the bus, he found P.W.7 as well as the deceased and A.1. He has also stated that he, P.Ws.7, 8 and 9 alighted at Thottimadhagu. At this juncture, it is to be remembered that in the complaint, Ex.P.1, P.W.1 has stated that she was informed by A.1 that he and the deceased have alighted at Thottimadhagu and that later, while they were proceeding towards the village, the deceased became sick. The evidence of P.W.6, in the background of the statement of P.W.1 in the complaint, Ex.P.1, therefore, show that A.1 and the deceased were seen together in the bus by P.W.6 and that both of them alighted at Thottimadhagu and later, the deceased was seen at the pump shed by P.W.1 with an injury on the neck. This is another strong circumstance against the accused, since it is for him to explain the circumstances under which the deceased suffered injury.

12. The third circumstance is the evidence of P.W.9. He was also treated hostile because he did not say that he saw A.1 cutting the deceased; but he has stated that he saw the deceased and A.1 in the bus and also saw them alighting from the bus at Thottimadhagu.

13. The evidence of P.Ws.6 and 9, therefore, show that the deceased was seen in the company of A.1 in the bus at 3.30 a.m. and that both of them alighted together and later the deceased was seen by his wife with a cut injury. The accused, even in his 313 statement, did not utter a word as to how the deceased suffered injuries. The total denial of all the circumstances by the accused and the absence of explanation on his part to explain the injury on the deceased can be taken as a missing link in the chain of circumstances as held by the Supreme Court in JOSEPH -vs- STATE OF KERALA (2000 S.C.C. (CRL.) 926),

14. The prosecution having succeeded in establishing the cause of death and the deceased having been seen in the company of the accused at 3.30 p.m. at Thotimadhagu and the deceased was found with a cut injury on the neck and the fact that the accused had no explanation to offer as to how the deceased suffered injuries, when put together clearly show that the prosecution has succeeded in establishing all the links in the chain of circumstances and therefore, this Court finds no reason to interfere with the conviction of A.1 under Section 302 IPC. On the evidence on record we find no material to find A.1 guilty under Section 341 IPC. and therefore, he is acquitted of the said charge framed under Section 341 IPC.

15. In the result, the conviction and sentence imposed upon A.1 under Section 341 IPC. are set aside and the conviction and sentence imposed upon him under Section 302 IPC. under charge No.3 are confirmed. The appeal is dismissed in the manner indicated above.

Index:Yes
Internet:Yes

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To,

1.The Additional District and Sessions Judge -cum- Chief Judicial Magistrate,
Cuddalore.
2.-do- through the Principal Sessions Judge, Cuddalore.
3.The Inspector of Police, Kattumannarkoil Police Station, Cuddalore District.
4.The Superintendent, Central Prison, Cuddalore.
5.The Collector, Cuddalore.
6.The Director General of Police, Madras.
7.The Public Prosecutor, High Court, Madras.